

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1520 of 1979

(WITH CROSS OBJECTIONS)

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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GUJARAT ELECTRICITY BOARD

Versus

S K INSULATED CABLES MFG CO

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Appearance:

MR DH THAKORE for MR SB VAKIL for appellant

MR SURESH C SHAH for respondent

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 31/08/98

ORAL JUDGMENT

#. By this First Appeal challenge has been made by the defendant to the judgment and decree passed in the Special Civil Suit No.298 of 1977 decided by the Civil Judge (S.D.) Vadodara on 30th June 1979 decreeing the

suit of the plaintiff-respondent for a sum of Rs.59040/with running interest of 6% p.a. from the date of suit till the date of realization, with proportionate costs.

#. The facts in brief are that the plaintiff-respondent sued the defendant-appellant to recover Rs.76740/= including Rs.17700/= as interest with running interest at the rate of 12% p.a. from the date of suit till the date of realization and also for the costs of the suit.

#. The plaintiff is a registered partnership firm having its registered office at New Delhi, 48, Janpath. Shri S.K.Gupta is its Managing Partner. The firm is doing manufacture of hi-fi insulated cables and wires at its factory at G.T.Road, Shahibaug, Uttar Pradesh. The defendant-appellant, Gujarat Electricity Board, invited tenders for supply of telephone cables. In response to that invitation, the plaintiff-respondent sent its quotation. The quotation made by the plaintiff-respondent has been accepted. The acceptance of quotation has been communicated to the plaintiff-respondent by the Board vide its acceptance letter dated 22.10.73 (ex.22). As per the acceptance of tender, the plaintiff-respondent had to supply ten thousand meters of 100 pairs of insulated cables and wire at the rate of Rs.6,000/= per 100 mts. of the total value of Rs.6,02,000/= and for ten pairs at the rate of Rs.600/= per 100 mts. of the total value of Rs.12,000/=. This supply was to be made within specified period. The acceptance of tender provided certain terms and clause 31 thereof is important and relevant for the purpose of decision of this Appeal. Clause 31 is in respect of delivery period and it provides that the delivery of material shall commence within 8/10 weeks after receipt of the order by the Board and will be completed in 14 to 16 weeks thereafter. This clause further provides that time being the essence of the contract, delivery period shall be strictly adhered to and the delivery period is subject to "Force Majeure" clause as is stated in DGS & D clause. Clause 32 of the acceptance of tender is in respect of the terms of payment. It provides that 90% of the contract price would be paid on despatch of the material and the balance of 10% would be paid after receipt of the goods in correct order and in good condition. Clause 8 is penalty clause for late delivery of the material. Clause 2 of the acceptance of tender provides for extension in the stipulated delivery date. The plaintiff-respondent had to send the material to the Superintending Engineer of the defendant-appellant at Ukai Dam. In the State of Uttar Pradesh, where the

plaintiff-respondent's factory is situated, there was acute shortage in supply of electricity. As a result thereof, the plaintiff-respondent could not commence the supply of the material earlier. The plaintiff-respondent could supply cables in the month of June 1974. The first despatch of the plaintiff-respondent of 2000 meters of ten pairs of the cables. The plaintiff could not supply material of item No.1, i.e. 10,000 mtrs. of 100 pairs of cables in time, and it therefore prayed to the appellant for extension of period of delivery. The main ground for non supplying the telephone cables within stipulated time was the acute shortage of electricity in the State of Uttar Pradesh. The defendant-appellant, vide its letter dated 4.9.74, informed the plaintiff that it will examine its case after completion of supply. Thereafter the plaintiff-respondent started supplying telephone cables of item No.1 from time to time. It used to send 500 mtrs. of item No.1 every time. The defendant-appellant accepted delivery of the telephone cables sent by the plaintiff-respondent from time to time but it deducted 10% of the amount of bills as penalty from each bill on the ground of delay in supply. This deduction from the bills was justified on the ground of delay made by the defendant-appellant in supply of the material as agreed under the acceptance of the tender. Thus, the appellant in all deducted totally sum of Rs.59040/= while making payment against the various 21 bills of the plaintiff-respondent. The plaintiff made supply of 10,000 mtrs. of 100 pairs of telephone cables on or about 25th June 1975. Thereafter, it demanded the payment of Rs.59,050/= from the defendant-appellant on the ground that deduction of this amount from the various bills was not justified. There had been some correspondence between the plaintiff-respondent and the defendant-appellant. Ultimately the plaintiff-respondent served notice through its advocate informing the defendant-appellant that it had appointed one arbitrator under clause 32 of the terms and conditions of the contract. A request has been made to the defendant-appellant to appoint its arbitrator. The defendant-appellant after receipt of the notice of the plaintiff, filed an application being Misc. Application No.12 of 1997 on 20.1.77 in the Court of Civil Judge, (S.D.), Vadodara alleging therein that clause-32 of the terms and conditions of the contract is not applicable to the present case. The said application came to be rejected by the Civil Judge, Vadodara. In this factual matrix the plaintiff-respondent had filed Civil Suit in the Court of Civil Judge (SD) Vadodara.

#. The defendant-appellant, on receipt of summons of the

suit, filed its Written Statement at ex.10. In the Written Statement, the defendant-appellant contested this suit, both on the ground of its maintainability, bar of limitation as well as on merits. On the basis of the pleadings of the parties, the learned trial Court framed as many as nine issues in this suit which read as under:

1. Whether the plaintiff proves that it was not in a position to supply 10,000 meters of 100 pairs within stipulated period as it was not within the control of plaintiff ?
2. Whether the plaintiff proves that the defendant is not entitled to deduct the penalty as per section 74 of the Indian Contract Act ?
3. Whether the suit is within the period of limitation ?
4. Whether the defendant proves that the plaintiff had committed the breach of the terms of the contract ?
5. Whether the defendant is entitled to deduct the amount from the bills as penalty for late delivery and whether the said deductions were made as per terms of the contract ?
6. Whether the plaintiff is entitled to claim Rs.59040/= plus interest at the rate of 12% p.a. of the said amount amounting to Rs.17700/= as refund from the defendant ?
7. Whether the plaintiff proves that the defendant has accepted the delivery and waived penalty ?
8. Whether the plaintiff is entitled to the entire amount as claimed in the suit ?
9. What order and decree ?

#. The learned trial Court, after considering the evidence produced by both the parties in the suit, decided issue No.1 to 3 and 7 in affirmative. Issue No.4 and 5 were decided in negative. Under Issue No.6, the learned trial Court held that the plaintiff-respondent is entitled to the claim of Rs.59,040/= with interest. Hence this Appeal before this Court.

#. On 15th July 1998, this First Appeal came up for hearing before this Court, on which date after hearing

the learned counsel for the parties, the Court made certain observations and on the request of learned counsel for the parties to settle the matter, if they so desire, on the suggestions as given out by the Court, the matter has been adjourned for today. The learned counsel for the appellant prayed that some more time may be granted to the parties to arrive at the settlement. This Appeal is of the year 1979. It has come up for hearing after about 19 years of filing thereof and this Court has granted sufficiently long period of about one month and eleven days to the parties, if they so desire, to settle the matter, but looking to the way in which the matter has been taken and keeping in view the fact that the Appeal is of the year 1979, and what they did during this period is not made known, I do not consider it to be appropriate to give any more time to the parties. It is understandable where some concrete efforts made by the parties during this period and which have been brought on the record of this Appeal, but from the statements made by the learned counsel for the parties, it is a matter where only the parties have given some offers and counter offers and it is very difficult to expect that they may be able to materialise the offers. It is also difficult to expect nor it is assured by the learned counsel for the parties that even after grant of time, the parties may be able to settle the matter. I do not find any justification in granting the prayer as made by the learned counsel for the appellant for deferment of hearing of this Appeal of the year 1979.

#. The learned trial Court declined to pass decree for Rs.17,700/= as claimed by the plaintiff-respondent as interest on the amount of Rs.59040/=-, and therefore it filed cross objections before this Court against that part of the decree of the trial Court.

#. The learned counsel for the defendant-appellant contended that the learned trial Court has committed serious illegality in holding that the Board could not have been entitled to deduct the penalty from the bills of the respondent for the material supplied by it. It is submitted that the plaintiff-respondent have not delivered the material within stipulated period as agreed upon under the terms of acceptance of the tender and as per the condition thereof, the Board is within its competence to levy penalty for the late delivery. It is urged that clause-31 of the acceptance of tender has express provision of the time being essence of the contract. The learned trial Court, in the submission of the learned counsel for the appellant, erred in not appreciating and understanding the clauses 8 and 31 of

the acceptance of tender in correct perspective. Clause-8 which contains the stipulation to pay the penalty in case of delay made in supply of the material is an integral part of the main contract. Time was made essence of the contract by the parties and failure to supply material within stipulated time certainly attracts the provisions of clause-8 of the contract by which the parties to that contract had assessed pecuniary loss which may be occasioned by late delivery as a genuine pre-estimate.

#. The learned counsel for the plaintiff-respondent, on the other hand contended that the Board has acted arbitrarily in the matter and it had both "head and tail". It has next been contended that the Board has made use of the benefits arising from the contract and it has, though delay has been made by the plaintiff-respondent in supply of the material, specifically not accepted the request made by the plaintiff-respondent for extension of time for supply of the material and nor declined the said request but the defendant-appellant has very specifically asked it to make supply of the material and by this conduct it (Board) has impliedly waived the condition as contained in clause-8 of the acceptance of tender, i.e. the contract. In the submission of the learned counsel for the plaintiff-respondent, in the alternative, the defendant-appellant has not at any point of time decided on the request of the plaintiff-respondent for extension of time to supply the material. Not only this, it has started to deduct 10% of the amount of bill of the materials without deciding on the question of the request of the plaintiff-respondent for extension of time. Delay in supply of material has been caused for the reasons beyond control of the plaintiff-respondent and deduction of maximum amount as a penalty as per clause-8 of the contract in the given facts of this case is perverse. It is submitted that the defendant-appellant has not terminated the contract for non-supply of the material within the stipulated period as provided under the contract but insisted for supply of the material and unless it is proved to the satisfaction of the Court that it suffered damages due to delay in supply of the material deduction of 10% of the amount from the bills of the supply of material as penalty by resorting to clause-8 of the contract is wholly unjustified. Taking everything worst against the plaintiff-respondent, the learned counsel for the respondent urged that from document ex.77, the letter of the defendant dated 4.9.74, it is explicit that the question of extension of the period of supply of the material has to be decided later

on and the plaintiff-respondent was asked to supply material but without examining the merits of the matter on completion of supply of the material, it has deducted 10% of the amount of the bills as a penalty. The Board being 'State' within the meaning of Article 12 of the Constitution as well as a statutory body, should not have acted as an ordinary businessman or trader. In view of the contents of the letter ex.77 dated 4.9.74, only after the Board decides that there was no justification in the cause as given out by the defendant-respondent for the delay in supply of the material, it could have deducted the 10% of the amount by way of penalty but not otherwise. Even if it is started to deduct 10% of the amount of Bill, then after completion of supply this matter should have been considered and after hearing the plaintiff-respondent a final decision should have been taken.

Submissions : Re. Cross Objections :

##. The learned counsel for the plaintiff-respondent contended that the trial Court has committed serious illegality in rejecting its claim for the interest amount of Rs.17,700/=. It is a case where Rs.59,000/= and odd have illegally been deducted by the defendant-Board from the Bills of the plaintiff-respondent which has resulted in loss to it who is a businessman and to compensate this loss, the trial Court should have awarded this amount as interest.

##. Replying to this contention of the learned counsel for the plaintiff-respondent, the learned counsel for the defendant-appellant submitted that the learned trial Court has not committed any error in declining to grant the amount aforesaid as interest as the terms of acceptance of the tender nowhere contemplate for payment of interest as well as the plaintiff-respondent has failed to lay its hands on any other contract or agreement or any document where the defendant-appellant has agreed upon to pay interest on the amount of penalty which has been deducted. Carrying this contention further, the learned counsel for the defendant-appellant submitted that as per clause-8 of acceptance of tender the defendant-appellant was within its competence to deduct 10% amount from the bills of the material supplied by the plaintiff-respondent as penalty for delayed supply thereof and if ultimately the decision of the Court would have been that this amount could not have been deducted, then pendente-lite and future, interest though could have been awarded but no interest could have been awarded for the period earlier to the date of filing of the suit.

The defendant-appellant has authority to deduct the 10% of amount of the bills as penalty for delayed supply of the material by the respondent. Admittedly the material has not been supplied by the plaintiff-respondent within stipulated period. Leaving apart whether penalty could have been levied or not or penalty levied by the defendant-appellant is found to be illegal by the trial Court, the respondent's claim for interest for the period earlier to filing of the suit is totally unjustified and could not have been accepted. Moreover, the plaintiff-respondent has failed to make out any case whatsoever for the damage suffered by it because of deduction of 10% of the amount from the bills of the supply of material by it to the defendant-appellant as penalty. Lastly, it is contended that in the letter ex.77 of the Board, it nowhere stated that it has waived its right to levy penalty for delayed supply of material and that even if that matter was kept pending it will not give any justification to the plaintiff-respondent to claim interest on the amount which has been deducted by the defendant-appellant under the head of penalty from the bills of the plaintiff-respondent.

##. I have given my thoughtful considerations to the submissions made by learned counsel for the parties.

##. I may first take up the First Appeal No.1520 of 1979. To appreciate the contention raised by the learned counsel for the defendant-appellant, I consider it to be appropriate to reproduce in this judgment, the relevant terms and conditions as contained in the acceptance of tender:

#### 8. Penalty for Late Delivery:

In case the materials are not delivered within the period stipulated in the order, you will be liable to pay at the discretion of the competent authority, a penalty to the Board upto 1/2% per week on the price subject to a maximum of 10% reckoned on the contract value of such complete portion or section of the plant, equipment, or materials including the portion supplied, which could not be brought into commission due to any part thereof not having been delivered in time. Due consideration will be given in the levy of penalty for reasons absolutely beyond your control for which documentary evidence will have to be produced to the satisfaction of the competent authority of the Board.

9. Extension in the Contractual Delivery Date:

- (a) It is your responsibility to ensure that the goods are delivered within the stipulated period in case there is any likelihood of delay in supply request for extension in delivery, giving reasons, shall be made at least 45 days prior to the expiry of the contractual delivery date.
- (b) If you are unable to supply the stores within the contractual date, the grant of extension with or without penalty will be considered by the Board in genuine cases. However, such extension will be subject to the following conditions:
  - (i) that no increase in price on account of any statutory increase in or fresh imposition of customs duty, excise duty, sales tax or on account of any other tax or duty leviable in respect of the stores specified in the said acceptance of tender which may take place on or after the contractual delivery date of the A/T referred to above, shall be admissible on such of the said stores as are delivered after the original contractual delivery date and
  - (ii) that notwithstanding any stipulation in the contract for increase in price on any other ground, no such increase which has become effective on or after the contractual delivery date of this said A/T shall be admissible on such of the said store as are delivered after the original contractual delivery date.
  - (iii) But, nevertheless, the purchaser shall be entitled to the benefit of any decrease in price on account of reduction in or remission of customs duty, excise duty, sales tax or on account of any other tax or duty or on any other ground as stipulated in the price variation clause which takes place on or after the contractual delivery date of the said A/T.

Explanation: The expression "contractual delivery date" shall mean and include any date on which or the last day of the period within which, the whole or part of the goods are contracted to be delivered.

20. Termination of Contract:

In case the contractor fails to deliver the stores or any consignment thereof, within contracted period of delivery or in case the stores are found not in accordance with prescribed specification and/or the approved sample, the Board shall exercise its discretionary power either:

- (a) to recover from the contractor as agreed, liquidated damages, or by way of penalty the amount as per penalty clause above.

or

- (b) to purchase elsewhere after giving due notice to the contractor on account and at the risk of contractor such stores not so delivered or others of similar description without cancelling the contract in respect of the consignment not yet due for delivery.

or

- (c) to cancel the contract.

In the event of the risk purchase of stores of similar description, the opinion of the Board shall be final. In the event of action taken under clause (a) or (b) above, the contractor shall be liable for any loss, which the Board may sustain on that account but the contractor shall not be entitled to any saving on such purchases made against default.

The decision of the Board shall be final as regards the acceptability of stores supplied by the contractor and the Board shall not be required to give any reason in writing or otherwise at any time for the rejection of the stores.

### 31. Delivery Period:

The delivery of material shall commence within 8/10 weeks after receipt of our order and will be completed in 14/16 weeks thereafter.

Time being the essence of this contract delivery period shall be strictly adhered to. The delivery period is subject to "Force Majeure Clause" as is accepted by D.G.S. & D.

## 32. Terms of Payment:

90% of the contract price of each consignment with full taxes and duties will be paid to you through Bank by this office on proof of despatch. You shall get the certificates approved well in advance to remit the Security Deposit prior to despatches and furnish a copy of the bill to the Accounts Officer (Billing), Gujarat Electricity Board, Race Course, Baroda-7 sufficiently in advance to enable this office to make prompt payment and get the Rail Receipt and documents retired from your bankers.

Prior intimation of despatch should also be sent to the consignee indicating R/R No., and date, so that in case R/R. is not received in time, delivery could be taken on an indemnity bond.

The balance 10% payment of contract price of each consignment will be paid after receipt of goods in correct order and in good condition at site duly inspected and certified by the consignee that goods comply with our requirements. The balance payment will be made within 30 days of receipt of materials at site. If there is any delay on the part of your bankers in handing over the documents resulting in payment of demurrage wharfage charges by the consignee in absence of R/R, the same will be to your account.

##. It is not in dispute between the parties that the delivery of the materials was not made by the plaintiff-respondent within the stipulated period thereof. From condition No.8, 9 and 20, I find that the Board has kept with it the discretion to grant extension of time of the supply of stores beyond stipulated period of date of delivery with or without penalty. This extension would have been subject to certain conditions as enumerated in condition No.9. Clause 20 of this acceptance of tender empowers the Board to terminate the contract in the contingencies where the Contractor fails to deliver the store or any consignment thereof within contracted period of delivery or in a case the stores are found not in accordance with prescribed specification and/or the approved sample. In any of that contingency the Board has discretionary powers either to recover from the contractor as agreed, liquidated damages or by way of penalty the amounts as per penalty clause or to purchase from elsewhere after giving due notice to the contractor

on account and at the risk of the contractor, such stores not so delivered or otherwise or similar discretion without cancelling the contract in respect of consignment not yet due for delivery. These two discretions are in addition to the power of cancellation of the contract. The plaintiff-respondent has prayed for extension of time for the supply of material or stores to the Board on which fact the learned counsel for the parties are not at variance.

##. The plaintiff-respondent, vide its letter dated 15th April 1974, ex.23, informed the Board that due to shortage of power it is unable to commence supplies and assured to despatch the first consignment by the end of the month of the said letter. The plaintiff-respondent received the test certificate from the Board under the letter dated 4th June 1974. Reference may have to the letters dated 4.9.74 and 21.12.74 of the Board ex.29 and 30 respectively and from reading thereof, I find that the Board at no point of time was intending to cancel this contract nor it has considered it to be a case of time being essence of the contract. What it really was intending and desiring that the plaintiff-respondent supplies the material to it. The Board appears to have been in dire necessity and need of the material and that is the reason that in all the aforesaid correspondence it has insisted for supply of the material by the plaintiff-respondent and so far as its request for the extension of the stipulated period of time for supply of delivery of the material is concerned, it has been kept alive for consideration. The consideration of the request of the plaintiff-respondent for extension of stipulated time under the acceptance of the tender was deferred with the assurance that it will be considered only after the completion of supplies. The real trouble appears to have started when the plaintiff-respondent has started to request the waiver of penalty. From ex.33, the letter of the Board dated 14th May 1975, the plaintiff-respondent was directed to call upon to intimate detailed reasons for delay in supply of the material for the examination. The plaintiff-respondent was further advised to depute its representative for discussion with the Board. Under the letter dated 5th June 1973, the appellant-Board has demanded from the petitioner-respondent, the U.P. State Electricity Board's Notifications restricting the electrical energy supply to the industries. After this process has been undertaken and when supply had been made of the materials and amount of penalty was deducted, the Board has taken somersault and forgetting what temptation it has been given to the plaintiff-respondent to make delivery of

goods, it has started reminding the plaintiff-respondent of clause-8 of the acceptance of tender and justifying that the penalty is rightly leviable. From the correspondence of the Board it is also borne out that the Board was urgently requiring the materials at site. Sufficient material has been produced on the record of the case from the side of the plaintiff-respondent that there was a power cut which has affected its manufacturing activities. In the terms of the acceptance of tender, there is a clause for extension of the contractual delivery period. It is true that there is a clause for penalty for late delivery but it is also equally true that even if some default has been made still the termination of the contract may not be made and the Board could have exercised other discretionary options available to it. From clause-9, I find that the extension of date was permissible though at the discretion of the Board even without penalty in a genuine case subject to certain conditions. It is not the case where the Board has undertaken the exercise to examine the case of the plaintiff-respondent of genuineness of its request for extension of time. It is also not case of the defendant-appellant that prayer for extension of the contractual delivery time made by the plaintiff-respondent was not agreeable subject to the conditions provided under clause-9 of the acceptance of tender. In this factual matrix on which there is no dispute, it was not fair on the part of the Board to get the goods supplied by the plaintiff-respondent under the temptation that his request for extension of time of the delivery date will be considered on completion of supply and when the supply has been made and when there was no any dispute on its quality, quantity and specification etc., the Board has used power for its own benefits. It would have been a different matter where there is absolute bar for extension of delivery date and the plaintiff-respondent is benefitted by delaying the delivery of the material to the Board or where the Board otherwise has suffered any loss because of late delivery of material made by the plaintiff-respondent. It is also not the case of the defendant-appellant that the prayer for grant of extension of delivery date made by the plaintiff-respondent does not fall under the category of the genuine cases. In these facts and circumstances of the case, the learned trial court has not committed any illegality in holding that the time was not considered to be essence of the contract by the Board itself. It is a case where it can be inferred that the Board was more concerned and desirous of supply of the material by the plaintiff-respondent to it. The plaintiff-respondent was also very much keen and desirous of supplying the

material to the Board but for the reasons stated in the correspondence and also proved in the trial of the suit, it could not stand to its commitment of supply of the material within the stipulated period. The Board has not cancelled this contract also and it has not exercised also either of the two other discretions available to it under clause-20 of the acceptance of tender. The Board has not very specifically stated to the plaintiff-respondent that the delivery of the goods shall only be accepted subject to the condition of payment of penalty by the plaintiff-respondent. Contrary to it, the plaintiff-respondent has been given out an impression and understanding that his request for extension of time for supply of goods beyond stipulated time will be considered only on completion of delivery of goods, material or stores. In these given facts of the case, the plaintiff-respondent could have reasonably believed that the Board will not take that harsh action against it and it will consider its request of extension of the period of delivery objectively and will not enforce the penalty clause. The defendant-appellant has not made out a case that despite of the power cut imposed by the U.P.State Electricity Board, the plaintiff-respondent was within its reach and control to manufacture requisite quantity of telephone cables to stand to its commitment to supply the same to the defendant-appellant Board within the stipulated period. It is to be stated at the cost of repetition that the defendant-appellant also was unable to make out a case before the trial Court that the case of the plaintiff-respondent was not a genuine case. The finding of facts recorded by the trial Court on the basis of the proved facts and ultimate decision given by it cannot be said to be perverse or arbitrary on the face of it which calls for any interference of this Court. In the given facts of this case, I do not find that the trial court has acted perversely or the view taken by it could not have been taken. It is a just and reasonable approach made by the learned trial court and looking to the admitted documentary evidence which has come on the record, the action of the Board to insist for recovery of penalty after accepting the supplied goods beyond stipulated period and not exercising its right to cancel the contract or exercising its other options available under clause-20, the learned trial Court has not committed any error, much less any illegality in decreeing the plaintiff's suit. The matter would have been different where by this delay, the plaintiff-respondent would have gained benefits by itself or the board would have suffered any loss and it is also not the case of the Board before this Court nor it was the case of the Board before the trial Court. The net

result of the aforesaid discussion is that I do not find any merits in the appeal of the Board and consequently the same is dismissed. The parties are directed to bear their own costs.

##. Now I may advert to the Cross Objections filed by the plaintiff-respondent. It is a case where admittedly, the plaintiff-respondent has not made delivery of the goods within the stipulated period. This amount for which the suit has been filed relates to the amount deducted from its bill by way of penalty by the Board. There is no agreement between the parties nor any usage or practice has been pleaded and proved by the plaintiff-respondent under which on this amount which was ultimately decreed by the Court, interest could have been awarded for the period prior to the date of filing of the suit. For the claim of interest, the plaintiff-respondent has to make out a case. The plaintiff-respondent has failed to lay its hands on any contract or agreement or any other document whereunder the defendant-appellant has agreed upon to pay the interest on the amount of penalty which has been deducted by it from the bills of the plaintiff-respondent. Otherwise also, in view of the fact that the material was not supplied within the stipulated period, I do not find it to be a fit case where any interest has to be awarded to the plaintiff on this amount of penalty deducted by the Board. As a result of aforesaid discussion, these cross objections are also dismissed with no order as to costs.

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(sunil)